IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4414 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMANLAL N JASANI

Versus

SB RAVAL

Appearance:

1. Special Civil Application No. 4414 of 1988

MR SURESH M SHAH for Petitioner No. 1

MR MEHUL S SHAH for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-2

RULE SERVED for Respondent No. 3-4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 22/08/2003

ORAL JUDGEMENT

Heard learned Counsel for the parties and perused the relevant records. This petition has been preferred for quashing and setting aside the impugned order dated 22.2.1988 passed by the Deputy Collector, Rajkot, whereby he has set aside the order dated 4.5.1986 passed by the City Survey Officer, Raiya Tal. Dist. Rajkot. It is stated that the City Survey Officer has passed the order under Chapter VIII of The Bombay Land Revenue Code. The Deputy Collector issued a notice dated 26th November, 1986 to the petitioner, as to why the revisional power be not exercised in respect of the order dated 4.5.1986 passed by the City Survey Officer. Thereafter the impugned order dated 22.2.1988 at Annexure "B" was passed by the Deputy Collector, which is under challenge in the present petition.

Learned AGP submitted that the Collector, Rajkot, vide order dated 9.10.1986 has directed the Deputy Collector to call for R&P, and to make formal enquiry in order to exercise the revisional power and to submit the report with his opinion within four days, but it appears that the Deputy Collector, without submitting his report in compliance with the order dated 9.10.1986 of the Collector, Rajkot, himself decided the matter after about one and a half years, without referring the matter to the Collector. The learned Counsel for the petitioner submitted that the order passed by the Deputy Collector in setting aside the order dated 4.5.1986 of City Survey Officer is illegal and without jurisdiction, inasmuch as Section 211 of The Bombay Land Revenue Code requires under the proviso that the Assistant or Deputy Collector himslf shall not pass any order in which a formal enquiry is required to be made, but he will submit the report with his opinion to the Collector who shall pass such orders thereon as he may deem fit. In the present case, the Deputy Collector has passed the order without submitting his opinion with the report to the Collector. The learned Counsel for the petitioner relied on the decision of this Court in the case of Kalpataru Land Development Pvt.Ltd. Vs. Assistant Collector, Surat & ors., reported in 37 (2) G.L.R page 600, wherein it has been observed that the provisions of Rule 108 (6) of the Rules envisage that the Government may call for and examine record of inquiry or proceedings of any subordinate revenue officer held under the Rules for the purpose of satisfying as to regularity, legality or propriety of the proceedings. It is further observed in the said judgement that it is not a case that power to hear revision is delegated to some authority under the Rules and therefore impugned order is illegal and is

contrary to the provisions of Section 211 of the Bombay Land Revenue Code and Rule 108(6) of the Rules.

On the basis of the aforesaid decision of this Court, the learned Counsel for the petitioner submitted that the order passed by the Deputy Collector is not sustainable in the eye of law and the same is without jurisdiction. At the most, the Deputy Collector was required to make a formal enquiry regarding the facts and the reasons given by the Collector vide order dated 9.10.1986 for exercising the revisional jurisdiction, but he has not submitted that report to the Collector but he himself assumed the powers of the Collector and passed the impugned order setting aside the order of the City Survey Officer dated 4.5.1986.

I have considered the contentions raised by the learned Counsel for the parties. It appears that the Deputy Collector or the Assistant Collector was not empowered to pass such orders in the matter where formal enquiry has been held, but they were required to submit the report with the opinion to the Collector who was to pass such orders as he may deem fit in the facts and circumstances of the case. No doubt the revisional power can be exercised by the Collector under Section 211 of the Bombay Land Revenue Code, but for that purpose the procedure has been laid down and that is subject to the proviso wherein if the formal enquiry has to be conducted by Assistant Collector or Deputy Collector, he is required to submit his report to the Collector who would be the competent authority to pass such appropriate orders in the matter, but in the present case the Deputy Collector has passed the order without submitting his report to the Collector. Considering the facts and circumstances, the order passed by the Deputy Collector vide order dated 23rd Feb. 1988 can be treated as a report of the Deputy Collector and after giving an opportunity of hearing to the parties the Collector can decide the matter and pass appropriate order in accordance with law. Accordingly the petition is allowed and the order dated 23.2.1988 passed by the Deputy Collector is quashed and set aside, and the matter is directed to be remanded to the Collector who will treat the order of Deputy Collector as report and opinion submitted by the Deputy Collector in compliance with order dated 9.10.1986 of the Collector. The Collector, after giving an opportunity of hearing to the parties concerned shall pass appropriate order in accordance with law. Rule is made absolute to the above extent.

It is made clear that the present petition is not

being disposed of on merits of the case and it will be open for the parties to make their legal contentions before the Collector, who will deal with the same and dispose of the matter in accordance with law after affording opportunity of hearing.

(Kundan Singh, J.)

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